(3)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION No. 246 /2005

Petitioner :

Shankar Lal Nath
Aged about 53 years
S/o Late Surendra Nath
Chirimiri Opencast Mine
Post : Chirimiri Colliery
Dist : Korea (CG)

P.R. No. 1005/05
Presented by Shri Ghanshyam Tamrakar
dated 10.03.05

Versus

Respondents

(1) South Eastern Coalfields Limited
Through its Chairman-cum-Managing Director
Seepat Road,
Bilaspur (CG) – 495 006

(2) Chief General Manager,
South Eastern Coalfields Limited
Chirimiri Area
Post : West Chirimiri
Dist : Korea – 497 773

(3) Sub Area Manager
Chirimiri Opencast Mine
Post : Chirimiri Colliery,
Dist : Korea (CG)

Writ Petition under Article 226 of the Constitution of India.

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 1246 of 2005

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Shankar Lal Nath

-Versus-

S. E. C. L. & others

Post for order on 12th September, 2005.

Sd/-
Satish K. Agnihotri
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 1246 of 2005

(63)

Shankar Lal Nath

-Versus-

S. E. C. L. & others

Petitioner by Shri Gary Mukhopadhyaya, Advocate.

Respondents by Shri H. B. Agarwal, Senior Advocate with Miss Sangeeta Mishra, Advocate.

ORDER

(12.9.2005)

By Justice Satish K. Agnihotri.

1. The present petition filed under Articles 226 of the Constitution of India impugns the Letter – Ref. No. :- SECL/ CHRM(OCP)/ SAM/05/RET/1716 dated 14.1.2005 (Annexure P/1), issued by the Supdt. (M)/Manager, Chirimiri Open Cast Project, South Eastern Coalfields Limited, whereby the petitioner was directed to retire from the service of the respondent/company on and from 1.8.2005, having completed the age of superannuation i.e. 60 years of age as on 31.7.2005.

2. The undisputed relevant facts, necessary for disposal of this petition, are that the petitioner was appointed on 10.7.1963 in Chirimiri Colliery under the erstwhile private owner. According to the letter dated 31.7.1987 (Annexure P/4) issued by the Dy. Personnel -Manager, Chirmiri Colliery, on the basis of the information available in the service records as well as the Nomination Form (Annexure P/5) concerning Coal Mines Provident Fund Account of the petitioner, his date of birth was recorded as 7.2.1946.

3. In the year 1973, Coal Mines were nationalized and Cirimiri Colliery was also taken over by the Coal India Ltd. Presently the

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said mining area is under control of the Respondent i.e. South Eastern Coal Fields Ltd. (hereinafter referred to as 'SECL').

4. Learned counsel for the petitioner submitted that the Govt. of India, in the year 1973 constituted a Committee called Joint Bipartite Committee for the Coal India (hereinafter referred to as 'JBCCI). The said committee comprised of representatives from INTUC, HMS, BMS, CITU, AITUC and representatives of Coal producing companies. The JBCCI held several meetings and finally the agreement, which is called as 'National Coal Wage Agreement' (hereinafter referred as 'NCWA') was executed under the provisions of Section 2 (p) of the Industrial Disputes Act, 1947. The several agreements were signed, which are as under:-

Name of agreement – Period of operation – Executed on

NCWA-I	1.1.1975 to 31.12.1978	11.12.1974
NCWA-II	1.1.1979 to 31.12.1982	11.8.1979
NCWA-III	1.1.1983 to 31.12.1986	11.11.1983
NCWA-IV	1.1.1987 to 30.6.1991	27.7.1989
NCWA-V	1.7.1991 to 30.6.1996	14.12.1995
NCWA-VI	1.7.1996 to 30.6.2001	14.12.2000

5. As per NCWA agreement, Implementation Instruction No. 76 dated 25th April, 1988, Procedure for determination/verification of the age of the employees and for resolution of disputed cases of Service Records is provided. Clause (B)(ii) of this agreement provides that unless there is a very glaring and wrong entry brought to the notice of the management the case for review determination of the date of birth will not be opened. Clause (B) is quoted herein below:-

"(B) Review determination of date of birth in respect of existing employees.

i) (a) In the case of the existing employees Matriculation Certificate or Higher Secondary Certificate issued by the recognized Universities or Board or Middle Pass Certificate issued by the Board of Education and/or Department of Public Instruction and admit cards issued by the aforesaid Bodies should be treated as correct provided they were issued by the said Universities/Boards/Institutions prior to the date of employment.

i) (b) Similarly, Mining Sirdarship, Winding Engine or similar other statutory certificates where the Manager had to certify the date of birth will be treated as authentic.

Provided that where both documents mentioned in (i) (a) and (i) (b) above are available, the date of birth recorded in (i) (a) will be treated as authentic.

ii) Wherever there is no variation in records, such cases will not be reopened unless there is a very glaring and apparent wrong entry brought to the notice of the Management. The Management after being satisfied on the merits of the case will take appropriate action for correction through Determination Committee/Medical Board."

6. Learned counsel for the petitioner further submitted that there was no occasion to reopen the case of the petitioner for varying the date of birth of the petitioner which was recorded in the service book and other related documents. Learned counsel further submitted that Section 40 of The Mines Act, 1952 provides for employment of the persons in any mine or part thereof on attaining the age of 16 years. When the petitioner was appointed on 10.7.1963, the Mines Act 1952 was applicable and the petitioner was rightly appointed after having attained the age of 16 years.

7. Learned counsel for the petitioner next submitted that the date of birth recorded in the mark sheet of the Higher Secondary School Certificate as on 1.7.1950 was not correct, for the

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reason, the date of birth of the petitioner being 1.7.1950, he would not have been appointed in the mines, as at that point of time the petitioner would have been only 13 years of age. As such, his date of birth so recorded in the Higher Secondary School certificate as 1.7.1950, should not be taken into consideration for varying the date of birth of the petitioner. Had the petitioner's date of birth been 1.7.1950 the petitioner would have retired in July, 2010 on attaining the age of superannuation i.e. 60 years of age from 1.7.1950. In the present case the respondents have taken the date of birth of the petitioner as 10.7.1945 (vide order dated 23.5.2000 Annexure P/6) while retiring the petitioner on attaining the age of 60 years from 1.8.2005. Learned counsel for the petitioner relied on the decisions of Supreme Court in State of U.P. & another Vs. Shiv Narain Upadhyaya, (2005) 6 SCC 49, Hindustan Lever Ltd. Vs. S.M.Jadhav & another, (2001) 4 SCC 52, and Sarjoo Prasad Vs. The General Manager & another, AIR 1981 SC 1481 to contend that at the fag end of career of an employee, change in the date of birth, which has become conclusive on the basis of the date of birth recorded in the service book, provident fund booklet, annual reports of the company, is not permissible. The petitioner further submitted that no show cause notice was given to the petitioner before reviewing his date of birth at the fag end of his career.

8. Mr. H. B. Agarwal, learned senior Advocate with Miss Sangeeta Mishra, Advocate appearing for the respondents, on the contrary, submitted that the petitioner is not the only person but the cases of date of birth of 98 persons, including the petitioner, have been reviewed and varied wherein glaring

defects were found. Learned counsel for the respondents submitted that in the present case the Higher Secondary School Certificate 1966 clearly mentions the date of birth of the petitioner as 1.7.1950, as such 1.7.1950 was accepted as the date of birth of the petitioner and accordingly the petitioner was directed to retire from service from the Company on and from 1.8.2005 having completed 60 years of age on 31.7.2005. Learned counsel for the respondents also relied on Implementation Instruction No. 76 (B) (ii) to derive the power by the management to reopen the case and make corrections in date of birth. Thus, learned counsel for the respondents submitted that the petition be dismissed accordingly.

9. After having heard learned counsel for both the parties and perusing the records, it is established that the date of birth recorded in service book, Provident Fund booklets and other documents is consistent with the date of birth recorded in the service book i.e. 7.2.1946. The Higher Secondary School Certificate 1966, wherein the date of birth is recorded as 1.7.1950 does not seem to be correct as the petitioner was already in employment after attaining 16 years of age, as it was permissible under Section 40 of The Mines Act, 1952 at the time when the petitioner was appointed as apprentice to work in the mines. If '1.7.1950' is accepted as the date of birth of the petitioner, he would have been only 13 years of age, as such he would not have been permitted to work in mines as an apprentice in the year 1963 under the provisions of The Mines Act, 1952. Section 40 of The Mines Act, 1952 reads as under:-

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"40. Employment of persons below eighteen years of age – *(1) After the commencement of the Mines (Amendment) Act, 1983,no person below eighteen years of age shall be allowed to work in any mine or part thereof.*

(2) Notwithstanding anything contained in sub-section (1) apprentices and other trainees, not below sixteen year of age, may be allowed to work, under proper supervisions, in a mine or part thereof by the manager:

Provided that in the case of trainees, other than apprentices, prior approval of the Chief Inspector or an Inspector shall be obtained before they are allowed to work.

Explanation: In this section "apprentice" means apprentice as defined in clause (a) of Section 2 of the Apprentices Act, 1961.

10. Clause B(ii) of the Implementation Instruction No. 76 provides for reopening of cases when any glaring and wrong entry has been brought to the notice of the management. Here, admittedly, it is not the case of the petitioner alone where the management came to the notice that in the higher secondary school certificate examination the stated date of birth of the petitioner was 1.7.1950. The management on its own without there being any specific defect brought to the notice of the management, had considered cases of 98 employees, who have completed 42 years of service as on 1.1.2000. In the verification, this was noticed that there was Higher Secondary School Certificate which stated different date of birth other than recorded in the service book and other documents of the service of the petitioner. The Implementation Instruction No. 76 Review determination of date of birth does not provide for over all verification of the existing employees without there being any specific information of glaring mistake, with regard to the date of birth of a particular employee.

11. Learned counsel for the respondents have no explanation as to why the petitioner's date of birth was taken as 10.7.1945 for retiring the petitioner from 1.8.2005 on attaining the age of 60 years. This is a case where the petitioner could have taken the advantage of his date of birth recorded in the High Secondary School Certificate as 1.7.1950, for the purpose of retirement in July 2010, on attaining the age of superannuation. However, the petitioner is firm and consistent on the date of birth that has been recorded in service record i.e. 7.2.1946.

12. The petitioner was also not afforded an opportunity of hearing which is corner stone of the principles of natural justice on that account also, in the opinion of this Court, the impugned letter deserves to be quashed.

13. In the case of Sarjoo Prasad (Supra), cited by the petitioner, the Supreme Court has held that the change of date of birth without show cause notice and without giving opportunity of hearing, involves civil consequences. The order correcting the date of birth of the serving employee and retiring employee on that basis was liable to be set aside on that basis.

14. In the case of Hindustan Lever Ltd.(Supra), cited by the petitioner, the Supreme Court has held that it is settled law that at the fag end of career of an employee a party cannot be allowed to raise a dispute regarding date of birth. In the case of State of U.P. & another Vs. Shiv Narain Upadhyaya(Supra) it is held that the date of birth as recorded in the service book should be decisive. In the present case not only the service book but other entries of date of birth in other documents are also consistent with the date of birth recorded in the service book. No glaring error has been found keeping in view the date of

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appointment and the minimum age required for appointment in mines, the date of birth recorded in service book and Coal Mines Provident Fund is conclusive.

15. For the reasons stated above, the impugned order/letter dated 14.1.2005 (Annexure P/1) is quashed and the respondents are directed to reinstate the petitioner in service and allow him to work till he attains the age of superannuation i.e. 60 years of age on the basis of his date of birth i.e. 7.2.1946 recorded in the service records. The petitioner will be entitled to consequential benefits of arrears of wages for the period he was out of service i.e. from 1.8.2005 till the date of reinstatement.

16. In the result, the petition is allowed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge